

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

ANGEL LUIS MEDINA,	:	
Plaintiff	:	CIVIL ACTION NO. 3:17-1941
v.	:	JUDGE MANNION
NANCY A. BERRYHILL¹,	:	
Defendant	:	

ORDER

Pending before the court is the report of Magistrate Judge Martin C. Carlson, which recommends that the decision of the Commissioner be affirmed and the plaintiff's appeal denied. (Doc. 18). No objections have been filed to Judge Carlson's report and recommendation.

¹On January 23, 2017, Nancy A. Berryhill became the Acting Commissioner of Social Security. On March 6, 2018, the Government Accountability Office stated that, as of November 17, 2017, Ms. Berryhill's status violated the Federal Vacancies Reform Act, which limits the time a position can be filled by an acting official and "[t]herefore Ms. Berryhill was not authorized to continue serving using the title of Acting Commissioner..." Violation of the Time Limit Imposed by the Federal Vacancies Reform Act of 1988 Commissioner, Social Security Administration. Government Accountability Office. March 6, 2018. However, Ms. Berryhill continues to functionally lead the Social Security Administration from her position of record as Deputy Commissioner of Operations. Pursuant to Federal Rule of Civil Procedure 25(d), Nancy A. Berryhill is substituted for Carolyn W. Colvin, Acting Commissioner of Social Security, as the defendant in this suit.

When no objection is made to a report and recommendation, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

In his appeal, the plaintiff argues that the administrative law judge’s (“ALJ”) evaluation of his obesity was legally insufficient. In carefully considering the plaintiff’s claims, Judge Carlson found that the ALJ’s decision is supported by substantial evidence and is adequately explained in a written decision that conforms to the legal and regulatory guidelines governing Social Security claims. Accordingly, Judge Carlson recommends that the decision of the Commissioner be affirmed and the plaintiff’s appeal denied.

The court has reviewed the entire report of Judge Carlson and finds no

clear error of record. The court further agrees with the sound reasoning which led Judge Carlson to his recommendation. As such, the court adopts the reasoning of Judge Carlson as the opinion of the court.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The report and recommendation of Judge Carlson, (**Doc. 18**), is **ADOPTED IN ITS ENTIRETY**.
- (2) The decision of the Commissioner is **AFFIRMED** and the plaintiff's appeal **DENIED**.
- (3) The Clerk of Court is directed to **CLOSE THIS CASE**.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: July 16, 2018

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